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**IN THE
COURT OF APPEALS OF INDIANA**

HENRY D. YOUNG,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 03A04-0701-CR-63
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE BARTHOLOMEW CIRCUIT COURT
The Honorable Stephen R. Heimann, Judge
Cause No. 03C01-0602-FB-400

July 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Henry D. Young (“Young”) appeals his sentence for two convictions of Sexual Misconduct with a Minor, as Class B felonies.¹ We affirm.

Issue

Young raises the issue of whether his sentence is inappropriate.

Facts and Procedural History

On February 21, 2006, the State charged Young with three counts of sexual misconduct with a minor alleging that Young had sexual intercourse with B.H. on two occasions and engaged in sexual deviate conduct with B. H. on one occasion. On October 30, 2006, Young entered into a plea agreement with the State pursuant to which he pled guilty to two of the counts of sexual misconduct in exchange for the State dismissing the third count, refraining from filing additional charges, and recommending to the trial court that Young serve his sentences concurrently. That same day, the trial court permitted Young to change his plea and the State to dismiss the third count, but took the decision of accepting the guilty plea and plea agreement under advisement.

After reviewing the presentence report and hearing testimony, the trial court accepted Young’s guilty plea and the plea agreement, entering a judgment of conviction on the two counts. The trial court found one mitigating circumstance that Young had led a law-abiding life for a substantial period of time and found the single aggravating circumstance that Young was in a position of trust with the victim and violated that trust. Young was sentenced to nine years with three years suspended to probation for each count with the sentences to be

served concurrently. Young now appeals.

Discussion and Decision

Young contends that his sentence is inappropriate. Although Young pled guilty according to a plea agreement, he can still challenge the appropriateness of his sentence because the plea agreement was “open,” leaving his sentence to the discretion of the trial court. See Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Pursuant to Indiana Appellate Rule 7(B), he seeks revision of his sentence.

Indiana Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under such review, a defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review. Childress, 848 N.E.2d at 1080. On appeal, Young mentions nothing as to the nature of the offense and little as to his character.

Regarding the nature of the offense, the advisory sentence is the starting point selected by the Legislature as an appropriate sentence for the crime committed. Id. at 1081. For a Class B felony, a defendant can be sentenced to between six and twenty years imprisonment, with the advisory sentence being ten years. Ind. Code § 35-50-2-5. Here, the trial court sentenced Young to nine years with three years suspended to probation for each count with the sentences to be served concurrently. Young was a long-time, trusted friend of B.H.’s parents and was known to B.H. as “Uncle Henry.” Trial Transcript at 44. When B.H. began experiencing depression due to the divorce of her parents and other unrelated medical

¹ Ind. Code § 35-42-4-9(a)(1).

problems, B.H.'s mother sought out Young to help counsel B.H. through this tough time because B.H. did not want to discuss her problems with her parents. B.H. agreed to talk to Young because she trusted him, and Young agreed to help counsel B.H. It was after Young was placed in this position of trust, as a counselor to B.H., that he fondled B.H. and had intercourse and oral sex with her.

When B.H. informed Young that her mother was asking her about their relationship, Young instructed B.H. that what they were doing was not wrong and to lie to the police if they asked if she and Young had sex. Young told B.H. that he would go to jail for twenty-five years if she told anyone. After B.H. told Young that she did not like to lie, Young continued to coach her that she needed to lie or he would break off the relationship.

Regarding his character, Young does not have a significant criminal history, which the trial court took into account as a significant mitigator when fashioning the imposed sentence. Despite having just complete sex-offender counseling, Young, at sentencing, still appeared to place partial blame on B.H. for his crimes, contending that she instigated the encounters, and believed that his actions had the purpose of helping B.H. "move on with her life." App. 156, Tr. 26. The trial court also noted that it declined to find Young's guilty plea as a mitigating circumstance in part because, in light of Young's answers and demeanor, it did not believe that Young's motivation for pleading guilty was to spare the victim further trauma. Young also received a significant benefit in that the third felony charge was dropped and the State agreed not to bring any other charges based on his conduct with B.H.

Based on this evidence, we cannot say that Young's sentence is inappropriate.

Affirmed.

SHARPNACK, J., and MAY, J., concur.